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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-80358; File No. SR-NYSE-2017-11)

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change to Amend Listing Standards for Acquisition Companies to Modify the Initial and Continued Distribution Requirements

March 31, 2017

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on March 20, 2017, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its listing standards for Acquisition Companies (“ACs”) to modify the initial and continued distribution requirements. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it

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<sup>1</sup> 15 U.S.C.78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its initial and continued distribution requirements for Acquisition Companies (or "ACs") listed under Section 102.06 of the NYSE Listed Company Manual (the "Manual").

An AC (typically known in the marketplace as a special purpose acquisition company or "SPAC") is a special purpose company formed for the purpose of effecting a merger, capital stock exchange, asset acquisition, stock purchase, reorganization or similar business combination with one or more operating businesses or assets. The securities sold by the AC in its initial public offering are typically units, consisting of one share of common stock and one or more warrants (or a fraction of a warrant) to purchase common stock, that are separable at some point after the IPO. Management generally is granted a percentage of the AC's equity and may be required to purchase additional shares in a private placement at the time of the AC's IPO.

Section 102.06 requires that an AC meet the distribution requirements of Section 102.01A at the time of initial listing. Under Section 102.01A, companies listing in connection with their IPO must have 400 holders of round lots (i.e., 100 shares) and 1.1 million publicly held shares. Companies listing in connection with a transfer from another exchange or a quotation listing must have 1.1 million publicly held shares at the time of initial listing on the Exchange and

- (i) 400 round lot holders;

- (ii) 2,200 total stockholders together with average monthly trading volume of 100,000 shares (for the most recent six months); or
- (iii) 500 total stockholders together with average monthly trading volume of one million shares (for the most recent twelve months).

The Exchange proposes to modify the distribution requirements for ACs. As proposed, the distribution requirements for ACs would be included in Section 102.06 rather than incorporated by reference to Section 102.01A. Under the proposed amendment, ACs would have to have at least 300 round lot holders when listing in conjunction with an IPO (rather than 400 round lot holders as is the case currently). ACs transferring from other exchanges or listing in connection with a quotation listing would be allowed to list on the basis of 1.1 million publicly held shares and 300 round lot holders (rather than 400 round lot holders as is the case currently). The Exchange is proposing to move to Section 102.06, but not alter, the other distribution criteria for transfers and quotation listings.

In addition, the Exchange is proposing to make minor clarifying revisions to Section 102.06. Specifically, the Exchange proposes to move a sentence detailing the minimum price per share for an AC at the time of initial listing from the end of a paragraph to the beginning of the same paragraph. Further, the Exchange proposes to delete an incorrect reference to footnote (A) after the aggregate market value requirement because footnote (A) only refers to the publicly-held shares requirement.

Consistent with these changes to the initial listing requirements, the Exchange proposes to amend the continued listing standards applicable to ACs set forth in Section 802.01B of the Manual. Under Section 802.01B, ACs are currently deemed to be below continued listing standards if: (i) their total number of stockholders is less than 400; (ii) the number of total

stockholders is less than 1,200 and the average monthly trading volume is less than 100,000 shares (for the most recent 12 months); or (iii) the number of publicly-held shares is less than 600,000. Consistent with the proposed amendments to the initial listing standards, the Exchange proposes to provide that ACs will be deemed to be below continued listing standards if they have fewer than 300 total stockholders (rather than the 400 total stockholders currently required).<sup>4</sup>

The Exchange believes that the proposed modification in the distribution requirements for ACs is appropriate because of the unique characteristics of the Acquisition Company structure. Specifically, pending the completion of a business combination, each share of an AC represents a right to a *pro rata* share of the AC's assets held in trust, AC shares typically have a trading price very close to their liquidation value and the liquidity and market efficiency concerns relevant to listed operating companies do not arise to the same degree. As such, there is less of a necessity to ensure that there are a large number of shareholders of an AC to create an active market that generates appropriate pricing. The Exchange also notes that SPACs have been listing on the Nasdaq Capital Market for a number of years subject to initial and continued shareholder requirements identical to those proposed by the Exchange<sup>5</sup> and that the proposed amendments will enable the Exchange to compete more effectively for SPAC listings.

The Exchange believes that the proposed amendment does not affect the status of NYSE listed securities under Exchange Act Rule 3a51-1(a) (the "Penny Stock Rule"),<sup>6</sup> as the amended

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<sup>4</sup> ACs will also continue to be deemed to be below continued listing standards if (i) the number of total stockholders is less than 1,200 and the average monthly trading volume is less than 100,000 shares (for the most recent 12 months) or (ii) the number of publicly-held shares is less than 600,000.

<sup>5</sup> See Nasdaq Marketplace Rules 5505(a)(3) and 5550(a)(3).

<sup>6</sup> 17 CFR 240.a51-1(a).[sic]

standards satisfy the requirements of Exchange Act Rule 3a51-1(a)(2).<sup>7</sup> While the amended requirements do not include an explicit requirement that newly-listed ACs have at least \$5 million in stockholders' equity as required by Rule 3a51-1(a)(2)(i)(A)(1),<sup>8</sup> the requirement that the AC must place at least 80% of its offering proceeds in trust upon consummation of its IPO ensures that all ACs will meet this requirement upon initial listing.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5)<sup>10</sup> of the Act, in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed amendments to its distribution requirements for ACs are consistent with the protection of investors because AC shares typically have a trading price very close to their liquidation value. The Exchange's distribution standards are important because the existence a significant number of holders can be an indicia of a liquid trading market, which supports an appropriate level of price discovery. As AC shares typically trade close to their liquidation value, price discovery is less important than it is with operating

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<sup>7</sup> 17 CFR 240.a51-1(a)(2).[sic]

<sup>8</sup> 17 CFR 240.a51-1(a)(2)(i)(A)(1)[sic]

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

companies and therefore there is a reduced reliance on distribution requirements to assure appropriate price discovery. In addition, a number of ACs have listed on Nasdaq Capital Market subject to identical distribution requirements to those proposed by the Exchange and there is no evidence that they have proven unfit for exchange trading. It is also important to note that any AC that remains listed after completing a business combination will be required to meet the NYSE's initial listing requirement of 400 round lot holders at the time of consummation of the transaction.<sup>11</sup>

While the proposed amended distribution requirements for the listing of ACs would be lower than those for other listing applicants, the Exchange does not believe that this difference is unfairly discriminatory. The Exchange believes this to be the case because market value-based listing standards are largely adopted to ensure adequate trading liquidity and, consequently, efficient market pricing of a company's securities. As an investment in an AC prior to its business combination represents a right to a *pro rata* share of the AC's assets held in trust, AC shares typically have a trading price very close to their liquidation value and the liquidity and market efficiency concerns relevant to listed operating companies do not arise to the same degree. As such, the Exchange does not believe it is unfairly discriminatory to apply different distribution requirements to ACs than to other listing applicants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to enable the Exchange to better compete with Nasdaq Capital

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<sup>11</sup> See Section 802.01B of the Manual.

Market by adopting distribution requirements that a greater number of ACs will be able to meet at the time of their IPOs. As such, it is intended to promote competition for the listing of ACs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2017-11 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2017-11. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2017-11 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>12</sup> 17 CFR 200.30-3(a)(12).



